



PROPOSED RULE MAKING (RCW 34.05.320)

CR-102 (7/22/01) Do NOT use for expedited rule making

Agency: Public Disclosure Commission
Preproposal Statement of Inquiry was filed as WSR 02-04-049; or
Expedited Rule Making -- Proposed notice was filed as WSR \_\_\_\_\_; or
Proposal is exempt under RCW 34.05.310(4).

Original Notice
Supplemental Notice to WSR \_\_\_\_\_
Continuance of WSR \_\_\_\_\_

(a) Title of rule: (Describe Subject) Title 390 WAC -- Rules relating to independent expenditures, sample ballots and slate cards, reports filed by nonreporting committees, exempt activities and the definition of Caucus of the State Legislature.
Purpose: To clarify and implement changes to RCW 42.17 and to simplify and streamline the campaign reporting process for candidates and political committees.
Other identifying information:

(b) Statutory authority for adoption: RCW 42.17.370(1) Statute being implemented: RCW 42.17.103 and .370(1)

(c) Summary: The proposed rule changes would repeal one rule, amend the form and reporting requirements for nonreporting committees, implement RCW 42.17.103, clarify definitions of exempt activities and sample ballots and slate cards, and simplify reporting of independent expenditure political advertising.
Reasons supporting proposal: The proposed new rule and rule amendments conform to statutory changes under RCW 42.17.103, clarify requirements of nonreporting committees, provide guidance to political party committees on the use of exempt funds, and define "top five contributors" for the purpose of political advertising by independent expenditure committees.

Table with 3 columns: Name of Agency Personnel Responsible for, Office Location, Telephone. Rows include Drafting (Doug Ellis), Implementation (Doug Ellis), and Enforcement (Phil Stutzman).

(e) Name of proponent (person or organization): Public Disclosure Commission
Private
Public
Governmental

(f) Agency comments or recommendations, if any, as to statutory language, implementation, enforcement and fiscal matters: None

(g) Is rule necessary because of: Federal Law? Federal Court Decision? State Court Decision?
Yes No Yes No Yes No
If yes, ATTACH COPY OF TEXT Citation:

(h) HEARING LOCATION: Commission Hearing Room, Evergreen Plaza Building, 711 Capitol Way, Room 206, Olympia, WA
Date: May 21, 2002 Time: 9:00 a.m.
Assistance for persons with disabilities: Contact Ruthann Bryant by Telephone
TDD ( ) or (360) 753-1111

Submit written comments to: Doug Ellis (dellis@pdc.wa.gov), Public Disclosure Commission, PO Box 40908, Olympia, WA 98504-0908, FAX (360) 753-1112 By (date) May 17, 2002

DATE OF INTENDED ADOPTION: May 21, 2002

NAME (TYPE OR PRINT) Susan Harris
SIGNATURE [Signature]
TITLE Assistant Director DATE 4/16/02

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TIME 02-09-080
WSR

(j) Short explanation of rule, its purpose, and anticipated effects:

The proposed rule changes would conform with statutory changes under RCW 42.17.103 which requires the reporting of independent expenditures within 24 hours of first being published or presented to the public during the 21 days before an election and would also specify the requirements and the kinds of committees that file PDC form C-5. The rule amendments define "Top Five Contributors" under RCW 42.17.510(2) and allow political committees to identify the top five contributors giving to the committee to underwrite political advertising for a specific independent expenditure. The definition of caucus of the state legislature is repealed.

The proposed rule changes also references the Washington State Supreme Court's decision regarding issue advocacy and the use of exempt funds, allows generic get-out-the-vote activity, regardless of the number of candidates benefited, to be funded with exempt contributions, and clarifies that at least three candidates must be listed on sample ballots and slate cards and that the distribution of sample ballots and slate cards must be within a geographical area where voters are eligible to vote for at least three candidates listed.

The proposed rule changes provide guidance and clarification to candidates and political committees on current statutory requirements.

Does proposal change existing rules?  YES  NO

If yes, describe changes:

The proposed changes clarify, simplify and streamline the campaign reporting process for candidates and political committees.

(k) Has a small business economic impact statement been prepared under chapter 19.85 RCW?

Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by writing to:

telephoning: (     )

faxing: (     )

No. Explain why no statement was prepared

The implementation of these rules does not impact small businesses.

(l) Does RCW 34.05.328 apply to this rule adoption?  Yes  No

Please explain:

The PDC is not an agency listed in subsection (5)(a)(i) of section 201. Further, the PDC does not voluntarily make section 201 applicable to this rule adoption pursuant to subsection (5)(a)(ii) of section 201, and to date JARRC has not made section 201 applicable to this rule adoption.

AMENDATORY SECTION (Amending WSR 99-12-066, filed 5/27/99, effective 6/27/99)

**WAC 390-17-030 Sample ballots and slate cards.** (1) **Intent.** The commission finds that, under certain conditions, expenditures for slate cards and other candidate listings fall within the scope of RCW 42.17.640 (14)(a) and are, therefore, exempt from contribution limits and eligible for payment with a bona fide political party's exempt funds. Slate cards and other candidate listings remain reportable under chapter 42.17 RCW and subject to the political advertising provisions of the law.

The purpose of this exemption from the contribution limits is to allow political parties and other sponsors to tell the general public which candidates they support. The exemption is not intended as a device to circumvent the contribution limits and full reporting requirements by undertaking any degree of significant campaigning on behalf of candidates.

(2) For purposes of RCW 42.17.640 (14)(a), "**sample ballots**" means slate cards, or other candidate listings, whether written or oral, that satisfy the qualifying criteria specified in subsection (10) of this section.

(3) Sample ballots constitute political advertising for a slate or list of candidates and must be properly identified and otherwise in compliance with the political advertising provisions, RCW 42.17.505 through 42.17.550.

(4) (a) **A bona fide political party** may use contributions it receives pursuant to RCW 42.17.640(14) to (~~design, print~~) produce and distribute sample ballots.

(b) Expenditures for sample ballots do not count against a bona fide political party's contribution limit to the candidates listed on the sample ballot. Further, when reporting sample ballot expenditures, a bona fide political party is not required to attribute a portion of the expenditure to each of the candidates listed on the sample ballot, but the names of the candidates must be reported along with the other information required by chapter 42.17 RCW and chapter 390-17 WAC.

(5) **Any person**, as defined by RCW 42.17.020, who makes an expenditure for sample ballots has made an expenditure that does not count against that person's contribution limit to the candidates listed.

(6) **An in-state political committee**, when disclosing expenditures for sample ballots as part of its C-4 report, is not required to attribute a portion of the expenditure to the candidates listed on the sample ballot, but the names of the candidates and their respective party affiliations must be reported along with other information required by chapter 42.17 RCW and chapter 390-17 WAC.

(7) **An out-of-state or federal committee**, when disclosing expenditures for sample ballots on a C-5 report, is not required to allocate a portion of the expenditure to the candidates listed on the sample ballot, but must report that an expenditure for sample ballots was made, the name and address of the person to whom the expenditure was made, the full amount of the expenditure, and the name, office sought and party affiliation of each candidate listed on the sample ballot. The report is due within ten days of the date the sample ballot is received by recipients.

(8) If a **lobbyist or lobbyist employer** makes expenditures for sample ballots, those expenditures are required to be reported in detail on the lobbyist's monthly L-2 report. Itemization of these expenditures must include the names and respective party affiliations of the candidates listed on the sample ballot, but no portion of the expenditure need be allocated to individual candidates listed on the sample ballot.

(9) **The candidates listed on a sample ballot** are not required to report any portion of the expenditure as an in-kind contribution to their campaigns.

(10) **Qualifying criteria for sample ballots, slate cards and other candidate listings**. In order not to count against a person's contribution limit to the candidates listed on a sample ballot and, in the case of a bona fide political party, in order to be eligible for payment with contributions received pursuant to RCW 42.17.640(14), a sample ballot must satisfy **all** of the criteria in (a) through (d) of this subsection.

(a) The sample ballot must list the names of at least three candidates for election to public office in Washington state (~~That is, identify~~) and be distributed in a geographical area where voters are eligible to vote for at least three candidates listed. The candidate listing may include any combination of three or more candidates, whether the candidates are seeking federal, state or local office in Washington.

(b) The sample ballot must not be distributed through public political advertising; for example, through broadcast media, newspapers, magazines, billboards or the like. The sample ballot may be distributed through direct mail, telephone, electronic mail, Web sites, electronic bulletin boards, electronic billboards or personal delivery by volunteers.

(c) The content of a sample ballot is limited to:

- The identification of each candidate (pictures may be used);
- The office or position currently held;
- The office sought;
- Party affiliation; and
- Information about voting hours and locations.

Therefore, the sample ballot must exclude any additional biographical data on candidates and their positions on issues as well as statements about the sponsor's philosophy, goals or accomplishments. The list must also exclude any statements, check marks or other indications showing support of or opposition to ballot propositions.

(d) The sample ballot is a stand-alone political

advertisement. It must not be a portion of a more comprehensive message or combined in the same mailing or packet with any other information, including get-out-the-vote material, candidate brochures, or statements about the sponsor's philosophy, goals or accomplishments. On Web sites, electronic bulletin boards or electronic billboards, the sample ballot must be a separate document.